

PERRIE M. WEINER (SBN 134146)
perrie.weiner@dlapiper.com
EDWARD D. TOTINO (SBN 169237)
edward.totino@dlapiper.com
MONICA D. SCOTT (SBN 286109)
monica.scott@dlapiper.com
DLA PIPER LLP (US)
2000 Avenue of the Stars, Suite 400 North Tower
Los Angeles, CA 90067-4704
Telephone: 310.595.3000
Facsimile: 310.595.3300

Attorneys for Defendants
INTERCONTINENTAL HOTELS GROUP
RESOURCES, INC.; INTERCONTINENTAL
HOTELS OF SAN FRANCISCO, INC.; SIX
CONTINENTS HOTELS, INC.

[additional counsel on signature page]

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

LAURA MCCABE and LATROYA
SIMPSON, individually and on behalf
of similarly situated individuals,

Plaintiffs,

v.

INTERCONTINENTAL HOTELS
GROUP RESOURCES, INC.;
INTERCONTINENTAL HOTELS OF
SAN FRANCISCO, INC.; SIX
CONTINENTS HOTELS, INC.; and
DOES 2 through 10, inclusive,

Defendants.

CASE NO. C12-4818-NC

**FURTHER JOINT CASE
MANAGEMENT CONFERENCE
STATEMENT**

Conference:

Date: May 15, 2013
Time: 10:00 a.m.
Place: Courtroom A, 15th Floor

Complaint Filed: July 8, 2012
FAC Filed: July 19, 2012
Trial Date: None

Pursuant to the Court's December 19, 2012 Case Management Scheduling Order, Plaintiffs Laura McCabe and LaTroya Simpson ("Plaintiffs") and Defendants InterContinental Hotels Group Resources, Inc., InterContinental Hotels of San Francisco, Inc. and Six Continents Hotels, Inc. (collectively "Defendant" or "InterContinental") respectfully submit this Further Joint Case Management Conference Statement:

A. Motions

On December 18, 2012, the Court denied InterContinental's motion to dismiss (Docket No. 24). On December 19, 2012, the Court ordered Plaintiffs to file their motion for class certification no later than July 1, 2013. (Docket No. 26.) Defendants anticipate bringing a Motion for Summary Judgment after discovery progresses further. No other motions have been brought by either Party.

B. Discovery

Both Parties have engaged in discovery, propounding written interrogatories, requests for production, and requests for admission.

1. Plaintiffs' Discovery to InterContinental

After a three-week extension to respond was granted by Plaintiffs, InterContinental provided written responses to Plaintiffs' discovery on March 12, 2013 and March 20, 2013. Defendant did not produce all responsive documents at that time. Defendant is engaged in what it has termed a "rolling production" of documents that has no fixed schedule or end date. To date, only a few hundred documents have been produced, many of which appear to have little to do with the claim. The parties are still engaged in a meet and confer process regarding Defendant's initial discovery responses. Defendant has stated that it will supplement certain responses but has not said by what date the responses will be provided. Moreover, based on the quality and quantity of documents produced to date, Plaintiffs find it difficult to believe Defendant's assertion below that only a small number of emails remain to be produced. The parties are still meeting and conferring over basic discovery related to the number of telephone calls that were recorded without warning by Defendant. Plaintiffs cannot schedule a pmk deposition until all of these discovery issues are resolved. Plaintiffs' ability to keep to the current class certification filing

1 deadline has been adversely impacted by the discovery delays and Plaintiffs will be seeking an
2 extension of the deadline at the case management conference.

3 **2. InterContinental's Discovery to Plaintiffs**

4 On or about April 3 and April 5, 2013, InterContinental personally served written
5 discovery on Plaintiffs. After granting Plaintiffs a two-week extension, Plaintiffs' responses to
6 InterContinental's written discovery are due on or before May 17, 2013. In addition, Plaintiffs
7 have subpoenaed the telephone records of multiple third parties but have refused to provide the
8 documents received pursuant to those subpoenas to InterContinental despite repeated requests.¹
9 InterContinental intends on deposing Plaintiff McCabe and Simpson on June 5 and 6, 2013
10 respectively.

11 InterContinental has produced significant number of documents responsive to Plaintiffs as
12 well as a privilege log. InterContinental is currently in the process of locating and reviewing a
13 small number of additional emails and the production of these emails will complete
14 InterContinental's document production. Therefore, almost all responsive documents
15 InterContinental agreed to produced have already been produced to Plaintiffs. InterContinental
16 has agreed to supplement certain interrogatories regarding outbound telephone calls and expects
17 to provide those supplemental responses shortly.

18 **C. Parties**

19 InterContinental has informed Plaintiffs that the appropriate Defendant in this action is
20 Six Continents Hotels, Inc. and that the remaining Defendants should be dismissed from this
21 action. InterContinental understands that Plaintiffs are considering dismissing defendants
22 Intercontinental Hotels Group Resources, Inc. and Intercontinental Hotels of San Francisco, Inc.
23 without prejudice, but they have not done so as of the filing of this Further Joint Statement.

24 **D. Amendment of Pleadings**

25 **1. Plaintiffs' Request**

26 Plaintiffs will be requesting an extension of this deadline at the case management
27 conference. The discovery responses and documents that were finally produced between mid-

28 ¹ Plaintiffs claim to have provided Defendant with a record of all calls to Defendant.
EAST55825108.1

1 March and the present demonstrate that it may be necessary to revise the allegations of the
 2 complaint. Nothing in the discovery responses or documents produced to date made it clear that
 3 that the call center that answered the Holiday Inn calls that were recorded without warning also
 4 handled (and recorded without warning) calls to other hotel brands owned by Defendant. That
 5 information was only disclosed during a telephone meet and confer several weeks ago. Plaintiffs
 6 are still trying to get discovery on this issue.

7 **2. InterContinental's Opposition**

8 InterContinental will oppose any request to amend the pleadings as this late date. The
 9 deadline to amend the pleadings passed almost five months ago. Plaintiffs have always been
 10 aware that defendant Six Continents is a hotel company with many hotel brands but Plaintiffs
 11 never sought to amend the complaint to include these other brands, or to change their proposed
 12 class definition -- California residents who called the **Holiday Inn** toll free reservations telephone
 13 numbers from cellular or cordless telephone calls and whose calls were recorded. (*See, e.g.*, First
 14 Amended Complaint, ¶ 23.) Neither Plaintiff alleges that she called any of InterContinental's
 15 reservation numbers for other brands. The only reason for Plaintiffs seeking to amend the
 16 complaint would be to attempt to broaden the case and impose excessive discovery burdens on
 17 InterContinental.

18
 19 Dated: May 8, 2013

DLA PIPER LLP (US)

20
 21 By /s/ Monica D. Scott

PERRIE M. WEINER
 EDWARD D. TOTINO
 MONICA D. SCOTT

Attorneys for Defendants

INTERCONTINENTAL HOTELS GROUP
 RESOURCES, INC; INTERCONTINENTAL
 HOTELS OF SAN FRANCISCO, INC.; SIX
 CONTINENTS HOTELS, INC.

1 Dated: May 8, 2013

KELLER GROVER LLP

2
3 By /s/ Eric A. Grover

4 ERIC A. GROVER
5 RACHAEL G. JUNG
6 Attorneys for Plaintiffs
7 LAURA McCABE and
8 LATROYA SIMPSON
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28